Ratnawati bt Hasbi Mohamad Suleiman v Superintendent of Land and Survey Department, Kuching Divisional Office & Anor

HIGH COURT (KUCHING) — SUIT NO KCH-21NCvC-10/9 OF 2014
ALWI ABDUL WAHAB JC
29 FEBRUARY 2016

Land Law — Acquisition of land — Acquisition for public purpose — Plaintiff's land acquired by state government for public purpose — Minister's declaration under s 48 of the Sarawak Land Code — Compensation awarded less than amount paid by plaintiff to purchase land — Whether first defendant failed to comply with mandatory procedural provisions in resumption process — Whether plaintiff aware that land subjected to declaration under s 48 of the Sarawak Land Code — Whether first defendant liable for loss of investment suffered by plaintiff — Sarawak Land Code (Cap 81) ss 48 & 60(1)

The plaintiff purchased a piece of land in Sarawak ('the subject land') for a total consideration sum of RM1.5m in 2011. In year 2012, the subject land was acquired by the state government for a public purpose. The plaintiff had no knowledge of the resumption process as the notification letter about the resumption process was sent by the first defendant to the plaintiff's wrong address. At the first inquiry, in the absence of the plaintiff, the first defendant awarded the plaintiff the compensation sum of RM811,693.89. The plaintiff wrote to the first defendant to officially complaint about the notification issue and as a result, the first defendant issued a fresh notice to the plaintiff. The plaintiff attended the second inquiry with her lawyer and private valuer. On the same date, the plaintiff conducted land search on the subject land and found out that the ownership of the land was changed from the state back to the plaintiff's name. On 11 November 2013, the first defendant issued and served the second award to the plaintiff. Thereafter the first defendant issued a compensation amounting to RM811,693.89 to the plaintiff which she accepted with protest. The plaintiff then filed the present action against the defendants for negligence and nuisance arising from the first defendant's action in removing plaintiff's name from the Register of Title of the subject land. The plaintiff argued that the first defendant was negligent for failure to comply with the mandatory statutory procedural provisions of the Sarawak Land Code ('the Code') in the resumption process. In reply, the defendants submitted that the plaintiff was aware that the subject land was needed for public purpose pursuant to Minister's declaration under s 48 of the Code at the time she purchased the subject land. Further, based on the assessment of the government's valuer ('DW1'), the market value of the subject land as at the date

of the declaration was RM811,693.89 as compensated by the first defendant to the plaintiff.

Held, dismissing the claim with costs of RM20,000 to the defendants:

(1) The first defendant could not be blamed for the loss of investment suffered by the plaintiff because the plaintiff was fully aware that the subject land was subjected to s 48 of the Code when she purchased it. If there was any injustice, it was only caused by the plaintiff's own self for agreeing to pay a consideration of RM1.5m which was more than the market value of the subject land without obtaining the market value of the subject land as at the date of the publication of s 48 declaration (see paras 19–20).

(2) Pursuant to s 60(1) of the Code, the amount of compensation awarded for land resumed shall be its market value at the date of the posting of the declaration under s 48 of the Code. In the present case, based on the assessment by DW1, the market value of the subject land as at the date of the declaration was RM810,000. There was no evidence adduced by the plaintiff to show that the first defendant's valuation of the market value of the subject land was incorrect or inadequate (see para 21).

(3) The declaration under s 48 of the Code did not extinguish or exhaust when the first resumption process had been completed as there were still many other parcels of land which were yet to be acquired under the same s 48 declaration. Further, there was nothing in the Land Code which provides that s 48 declaration would lapse upon the completion of the resumption of the land to the state government (see para 22).

(4) The alleged negligent of the first defendant for failure to notify the plaintiff on the date of inquiry had no direct bearing on the subject land been resumed by the state government under s 48 declaration. In any event, the first defendant did not owe any duty of care to the plaintiff in regard to the decision or declaration of the Minister on the resumption of her land by the state government and any alleged loss arising therefrom (see paras 25–26).

(5) The complaint of not being issued with the notice was remedied by the first defendant when second inquiry was held to accord the plaintiff the opportunity to present her case for adequate compensation. The proper forum to deal with the plaintiff's grief of inadequate compensation of award should be by way of land reference to court to determine whether the amount of compensation awarded to the plaintiff was adequate or otherwise (see para 27).

[Bahasa Malaysia summary

Plaintif telah membeli sebidang tanah di Sarawak ('tanah tersebut') untuk jumlah balasan menyeluruh RM1.5 juta dalam 2011. Pada 2012, tanah tersebut telah diperoleh oleh kerajaan negeri untuk tujuan awam. Plaintif tiada pengetahuan tentang proses semula itu kerana surat pemberitahuan tentang proses semula yang dihantar oleh defendan pertama kepada alamat plaintif yang salah. Pada siasatan pertama, dalam ketiadaan plaintif, defendan pertama telah mengawardkan plaintif jumlah pampasan RM811,693.89. Plaintif telah menulis kepada defendan pertama untuk mengadu secara rasmi tentang isu pemberitahuan dan akibat itu, defendan pertama telah mengeluarkan notis baharu kepada plaintif. Plaintif telah menghadiri siasatan kedua dengan peguamnya dan penilai swasta. Pada tarikh sama, plaintif telah menjalankan carian tanah ke atas tanah tersebut dan mendapati bahawa pemilikan tanah itu telah bertukar daripada kerajaan negeri kepada nama plaintif. Pada 11 November 2013, defendan pertama mengeluarkan pampasan berjumlah to RM811,693.89 kepada plaintif yang telah diterimanya dengan bantahan. Plaintif kemudian memfailkan tindakan ini terhadap defendan-defendan untuk kecuaian dan kacau ganggu yang timbul daripada tindakan defendan pertama kerana mengeluarkan nama plaintif daripada Pendaftar Hakmilik tanah tersebut. Plaintif berhujah bahawa defendan pertama telah cuai kerana kegagalan mematuhi peruntukan-peruntukan prosedur statutori mandatori Kanun Tanah Sarawak ('Kanun tersebut') dalam proses semula itu. Sebagai jawapan, defendan-defendan telah berhujah bahawa plaintif menyedari yang tanah tersebut diperlukan untuk tujuan awam menurut deklarasi Menteri di bawah s 48 Kanun tersebut pada masa dia membeli tanah tersebut. Selanjutnya, berdasarkan penilaian penilai kerajaan ('DW1'), nilai pasaran tanah tersebut pada tarikh deklarasi itu adalah RM811,693.89 seperti mana diberi pampasan oleh defendan pertama kepada plaintif.

Diputuskan, menolak tuntutan dengan kos RM20,000 kepada defendan-defendan:

(1) Defendan pertama tidak boleh dipersalahkan untuk kerugian pelaburan yang dialami oleh plaintif kerana plaintif menyedari sepenuhnya bahawa tanah tersebut tertakluk kepada s 48 Kanun tersebut apabila dia membelinya. Jika terdapat apa-apa ketidakadilan, ia hanya disebabkan oleh jualan plaintif sendiri kerana bersetuju membayar balasan RM1.5 juta yang melebihi nilai pasaran tanah tersebut tanpa memperoleh nilai pasaran tanah tersebut pada tarikh penerbitan deklarasi s 48 (lihat perenggan 19–20).

(2) Menurut s 60(1) Kanun tersebut, jumlah pampasan yang diawardkan untuk tanah semula hendaklah nilai pasarannya pada tarikh keluaran deklarasi itu di bawah s 48 Kanun tersebut. Dalam kes ini, berdasarkan penilaian oleh DW1, nilai pasaran tanah tersebut pada tarikh deklarasi

adalah RM810,000. Tiada keterangan yang dikemukakan oleh plaintif untuk menunjukkan bahawa penilaian defendan pertama tentang nilai pasaran tanah tersebut adalah tidak betul atau tidak mencukupi (lihat perenggan 21).

(3) Deklarasi di bawah s 48 Kanun tersebut tidak dihapus atau dipadamkan apabila proses semula pertama telah selasai kerana masih terdapat banyak petak tanah lain yang masih belum diperoleh di bawah deklarasi s 48 yang sama. Selanjutnya, tiada apa dalam Kanun Tanah yang memperuntukkan bahawa deklarasi s 48 akan luput apabila selesai tanah semula kepada kerajaan negeri (lihat perenggan 22).

(4) Kecuaian defendan pertama yang dikatakan kerana kegagalan untuk memberitahu plaintif tentang tarikh siasatan tidak mempunyai kaitan secara langsung ke atas tanah tersebut yang disambung semula oleh kerajaan negeri di bawah deklarasi s 48. Dalam apa keadaan, defendan pertama tidak mempunyai apa-apa kewajipan berjaga-jaga ke atas plaintif berkenaan keputusan atau deklarasi Menteri berhubung penyambungan tanahnya oleh kerajaan negeri dan apa-apa kerugian yang timbul daripada itu (lihat perenggan 25–26).

(5) Aduan kerana tidak diberikan notis telah diremedikan oleh defendan pertama apabila siasatan kedua diadakan untuk memberi peluang kepada plaintif untuk mengemukakan kesnya bagi pampasan mencukupi. Forum yang wajar untuk mengendalikan kilanan plaintif berhubung award pampasan yang tidak mencukupi hendaklah melalui rujukan tanah kepada mahkamah untuk menentukan sama ada jumlah pampasan yang diawardkan kepada plaintif adalah tidak mencukupi atau sebaliknya (lihat perenggan 27).]

Notes

For cases on acquisition for public purpose, see 8(2) *Mallal's Digest* (5th Ed, 2015) paras 2221–2225.

Cases referred to

Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor [1980] 1 MLJ 58, FC (refd)

Legislation referred to

Sarawak Land Code (Cap 81) ss 13, 15A, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 60, 60(1), 61, 79, Part IV

William Ding (William Ding & Co Advocates) for the plaintiff.
JC Fong (Evy Liana with him) (Senior Federal Counsel, State Attorney General's Chambers) for the respondent.

Alwi Abdul Wahab JC:

INTRODUCTION

[1] This is the plaintiff's claims against the first and second defendants for negligence and nuisance arising from the first defendant's action in removing the plaintiff's name from the Register of Title after a parcel of land known as Lot 582, Block 6, Matang Land District containing an area of 2.02500 hectares ('the subject land') was acquired by the state government for a public purpose, ie for the flood by pass project from Sungai Sarawak to Batang Salak in Kuching area. The plaintiff is also seeking various declaratory orders as a result of the alleged impropriety conduct of the first defendant.

[2] The plaintiff (Ratnawati bt Hasbi Mohamad Suleiman) is the registered owner of the subject land after she purchased it from the previous co-proprietors (Agatha Cheong Siew Teng and Mary Ling Moi Moi) for a total consideration sum of RM1.5m on the 1 August 2011.

[3] The first defendant is the Superintendent of Lands and Surveys Department, Kuching, who had carried out the resumption process affecting the subject land. The second defendant is the Government of Sarawak State and the employer and/or the principal of the first defendant.

THE FACTS

[4] The plaintiff who was and is currently residing in Doha, Qatar had bought the subject land for the purpose of her investment in her homeland. Through her brother-in-law Dzamaluddin bin Zainuddin ('PW2'), she discovered that the subject land is no longer registered in her name as it had been resumed to the state government on 9 January 2012. This information was told to PW2 by the counter staff at Kuching Land Office when PW2 wanted to pay for the quit rent of the subject land on behalf of the plaintiff in 2013.

[5] The plaintiff had no knowledge of the registration of the memorandum of declaration of resumption vide Instrument No L679/2012 dated 9 January 2012 ('first resumption process') as the first defendant's letter to notify the plaintiff prior to the resumption was sent to the plaintiff's wrong address. The plaintiff's correct address is Lot No 336 Jalan Abang Ateh, Kuching but in the present case the letter was sent to No 366 Jalan Abang Ateh. In the absence of the plaintiff during the inquiry, the first defendant awarded her the compensation sum of RM811,693.89 vide the Award No 293/2011 ('first award').

[6] The plaintiff through Messrs William Ding & Co Advocates wrote a letter dated 2 September 2013 to the first defendant to officially complaint the action of the first defendant in causing the plaintiff's land to be resumed to the state government without her notice or knowledge in contravention of the mandatory statutory provisions under the Sarawak Land Code ('the Land Code').

[7] As a result of the plaintiff's letter, the first defendant then served a fresh s 49 notice under the Land Code to inform the plaintiff of the second inquiry which was held on the 24 October 2013. The said inquiry was attended by the plaintiff together with her lawyer and a professional private valuer. On the same date, a land search was also done by the plaintiff through Messrs William Ding & Co Advocates and they had found out that the ownership of the land was changed from the state back to the plaintiff's name as shown in the first defendant's registry data system.

[8] On the 11 November 2013, the first defendant issued and served the Award No 420/2013 ('second award') to the plaintiff and the memorandum of declaration of resumption vide Instrument No L202/2014 affecting the subject land to resume to the state was registered on 5 January 2014 ('second resumption process'). Thereafter, the first defendant issued compensation payment by way of cheque amounting to RM811,693.89 to the plaintiff which she accepted under protest.

THE PLAINTIFF'S CASE

[9] It is the plaintiff's contention that the first defendant was negligent in registering the memorandum of declaration of resumption vide Instrument No L679/2012 to cause the subject land to be resumed to the state government on the 9 January 2012 and such action by the first defendant without the knowledge of the plaintiff had caused the plaintiff to suffer loss and damages.

[10] The plaintiff further submitted that in acquiring the subject land to be resumed to the state government, the first defendant has failed to serve a notice pursuant to s 49 of the Land Code. The inquiry conducted by the first defendant on the 25 October 2011 pursuant to s 51 of the Land Code was also held in the absence of the plaintiff. As a result, the Award No 293/2011 arising out of that inquiry on the 25 October 2011 was never made known or served onto the plaintiff.

[11] The plaintiff further contended that the first defendant cannot transfer the subject land back to the plaintiff after the first resumption process and after receiving the complaint by the plaintiff's counsel without first going through the necessary statutory process of re-alienation of an alienated land back to the

plaintiff pursuant to s 15A and/or s 13 of the Land Code.

[12] The plaintiff also contended that the first defendant is wrong in law to issue a fresh s 49 notice based on the earlier s 48 declaration of the Land Code *gazetted* on the 2 July 2009 which was already deemed to be extinguished on the 9 January 2012 after the first resumption process.

[13] The plaintiff further contended that the first defendant cannot registered a second memorandum of declaration of resumption vide Instrument No L202/2014 ('second resumption process') affecting the same parcel of land without first revoking the earlier memorandum of declaration of resumption vide Instrument No L679/2012 ('first resumption process'). Thus, the two instruments of memorandum of declaration of resumption created the duplicity of awards.

THE DEFENDANT'S CASE

[14] It is the defendants' contention that the subject land was purchased by the plaintiff after the Minister's declaration under s 48 of the Land Code certifying that the subject land was needed for the public purpose which was *gazetted* vide GN 2624 dated 2 July 2009.

[15] It is the defendants further contention that the plaintiff had signed a declaration that she was aware that the subject land was subject to the said s 48 declaration at the time when she purchased the subject land.

[16] The defendants also contended that the compensation of RM811,693.89 paid to the plaintiff is the market value of the subject land as at the date of s 48 declaration and as assessed by the government's valuer ie Haslinda bt Hamdan ('DW1').

THE FINDINGS OF THE COURT

[17] The plaintiff's argued that first defendant was negligent for failure to comply with the mandatory statutory procedural provisions of the Land Code namely ss 49, 51, 52, 53 and 54 in causing the plaintiff's land to be resumed to the state on 9 January 2012 in the first resumption process as well as the wrong procedures adopted by the first defendant during the second resumption process.

[18] In my view, the root of all these claims boils down to the unsatisfactory amount of compensation awarded to the plaintiff which is less than RM1.5m she paid to purchase the said subject land. This can be clearly seen from the plaintiff's own evidence in that she had loss all her investment cost as a result of

the unlawful and negligent act committed by the first defendant. The relevant parts ofthe plaintiff's claim as stated in her witness statement WSPW4 are reproduced below:

> Paragraph 25(i) of Exhibit WS-PW4
>
> I bought the 2.0250 hectares of the said land sometime in August 2011 using my husband's hard earned money in the total sum of Ringgit Malaysia 1.5 million. I could not believe that my whole investment simply disappear just like that. Secondly, I could not believe that the State can just simply acquire people's land without informing the land owner. This kind of happening really shocked me.
>
> Paragraph 25(v) of Exhibit WS-PW4
>
> ... I paid RM1.5 million for the land in August 2011 and the 1st Defendant who forced through his inquiry came out with his unreasonable Award of RM 811,693.89. Because of the unlawful act committed by the 1st Defendant, I have lost substantial amount of my investment in the sum of RM 688,306.11. Because of the unlawful act committed by the 1st Defendant, I want this Court to grant me the sum of RM 688,306.121 which I am being made to suffer.

[19] In my view, the first defendant could not be blamed for the loss of investment suffered by the plaintiff because as rightly pointed out by the counsel for the defendants, the plaintiff is fully aware that the land in question is subject to s 48 at the time when she purchased it. What this means is that the plaintiff ought to have taken the risk when she proceeded to buy the subject land although she knew that the subject land could be acquired by the state government for public purpose and the amount of compensation to be paid in the event of such acquisition ought to be based on the market value of the subject land as at the date of the publication of s 48 declaration as assessed by the government's valuer.

[20] It is by the plaintiff's own admission that the market value of the subject land in 2009 via Minister's declaration under s 48 of the Land Code may not be the same as its market value in 2011. However, in the present case, there is no evidence that the plaintiff had ever obtained a professional valuation of the subject land on the market value thereof as at the date of the publication of s 48 declaration when she bought the subject land in 2011. If there is any injustice, it was only caused by the plaintiff's own self for agreeing topay a consideration of RM1.5m which is more than the market value of the subject land without obtaining the market value of the subject land as at the date of the publication of s 48 declaration.

[21] Section 60(1) of the Land Code clearly provides that the amount of compensation to be awarded for land resumed shall be its market value at the date of the posting of the declaration under s 48 if no notification under s 47 has been published. It was held as such in the case of *Superintendent of Lands &*

Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor [1980] 1 MLJ 58. In addition, that case further held that where both notification and declaration are issued, the earlier date must be taken as the date in determining the compensation. In the present case, there is no such notification under s 47 issued and the plaintiff's pleaded case is not based on s 47 notification. Based on the assessment of DW1, the market value of the subject land as at the date of s 48 declaration is RM810,000 which is at RM40 psm (RM161,877.78 per acre). There is no evidence adduced by the plaintiff to show that the first defendant's valuation of the market value of the subject land as at the date of publication of s 48 was incorrect or inadequate.

[22] On the plaintiff's contention that s 48 declaration had lapsed and extinguished once the first resumption process is completed and the first defendant could not issue fresh s 49 notice again based on the current s 48 to carry out the second resumption process, I disagree because this s 48 declaration does not only cover the subject land but a total of 152 parcels of land as shown in the *gazette* notification (exh D3). The memorandum of declaration of resumption of land (exh D1) also shows that only 33 parcels of land out of the 152 were declared as having been taken possession of by the state government. In such a case, it is not correct that s 48 declaration extinguished or exhausted when the first resumption process had been completed as in the present case since there are still many other parcels of land which are yet to be acquired under the same s 48 declaration. Furthermore, there is nothing in the Land Code which provides that s 48 declaration would lapse upon the completion of the resumption of the land to the state government.

WHETHER THE FIRST DEFENDANT IS NEGLIGENT

[23] The subject land was acquired by the state pursuant to a declaration by the Minister under s 48 of the Land Code for the specified public purpose and the said declaration is valid unless withdrawn by the Minister under s 79 of the same. The declaration under s 48 for the resumption of the subject land was in no way under the purview of the first defendant but the Minister who is not a party in this case.

[24] I agree with the defendants' submission that as a Superintendent, the first defendant's duty only commences after the declaration by the Minister under s 48 of the Land Code. The duties imposed on the first defendant are provided for under Part IV of the Land Code particularly to ensure that compensation is paid to the plaintiff and to be assessed in accordance with ss 60 and 61 of the Land Code. These duties in ss 49, 50, 51, 52, 56 and 57 of the Land Code relate primarily to giving notice to the plaintiff of the process of the resumption of her land, notifying her of her rights to state her interests and

submit claims for compensation, conducting an inquiry to determine her claim for compensation, to make an award of compensation and if the award is challenged, to submit the matter to the High Court for determination on the adequacy of his award if so required by the aggrieved land owner.

[25] The alleged negligent act of the first defendant by the plaintiff arose from the first defendant's failure to ensure that the plaintiff was properly served with the notice of the inquiry and the subsequent award due to the wrong address used by the first defendant. In my view, the alleged negligent for failure to notify the plaintiff on the date of inquiry if any is not the cause for the subject land to be resumed by the state government. The issue of the resumption of the plaintiff's subject land pursuant to s 48 declaration of the Minister and the insufficient amount of the compensation award are the main subject matter of the complaint which must be distinguished with the issue regarding the alleged negligent act of the first defendant.

[26] In my view, the alleged 'negligent act' of the first defendant had no direct bearing on the subject land been resumed by the state government under s 48 declaration. In any event, the first defendant does not owe any duty of care to the plaintiff in regard to the decision or declaration of the Minister on the resumption of her land by the state government and any alleged loss arising therefrom.

[27] In so far as the complaint of not being issued with the notice is concerned, this was remedied by the first defendant when a second inquiry was held to accord the plaintiff the opportunity to present her case for adequate compensation. The said inquiry was attended by the plaintiff together with her lawyer and a professional private valuer. An award of compensation was made by the first defendant following io the inquiry after hearing from the plaintiff and her lawyer. The sum awarded was paid to and duly received by the plaintiff under protest. In my view, the proper forum to deal with the plaintiff's grief of inadequate compensation of award should be by way of land reference to court to determine whether the amount of compensation awarded to the plaintiff is adequate or otherwise.

CONCLUSION

[28] Based on the above consideration the plaintiff's claim is dismissed with cost of RM20,000 to the defendants.

Claim dismissed with costs of RM20,000 to defendants.

Reported by Dzulqarnain Ab Fatar